IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL Nos.1206 of 2003 & 1210 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02-04-2002 in W.P.No. 5889 of 1993 & the Order dated 18-9-2002 in W.P.No.1380 of 2000 on the file of the High Court.)

W.A.No.1206 of 2003

Between:

1 The State of Andhra Pradesh, rep. by its Secretary, Education Department, Secretariat, Hyderabad.
2 The Director of School Education, Govt. of A.P., Hyderabad.
3 The Regional Joint Directgor of School Education, Cuddapah Region,

Cuddapah.
4 The District Educational Officer, Kurnool.

..... APPELLANTS

AND

Anjuman-e-Islamiah,Kurnool, rep. by its Joint Secretary Sri.G.Abdus Salam, Correspondent of Umar Arabic High School, Kurnool.

.....RESPONDENT

Counsel for the Appellant: GP FOR SCHOOL EDUCATION

Counsel for the Respondent : MR SYED SHAREEF AHMED

W.A.NO.1210 of 2003

Between:

1 The State of Andhra Pradesh, rep by its Secretary, Education Dept, Secreteriat, Hyderabad.
2 The Director of School Education, Govt of A.P, Hyderabad.
3 The Regional Joint Director of School Education, Cuddapah. Cuddapah.
4 The Dist. Educational Officer, Kurnool.

..... APPELLANTS

AND

1 Farida Bano W/o.Ziaul Kareem,
R/o. H.No. 6/14, A.Peta, Kurnool Dist.

2 The Correspondent Umar Arabic High School and Umar Arabic Elementary

School, Kurnool

.....RESPONDENTS

Counsel for the Appellants: GP FOR SCHOOL EDUCATION

Counsel for the Respondent Nos 1& 2.: MR.K.SOMA KONDA REDDY

The Court made the following :

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WA Nos.1206 AND 1210 OF 2003

COMMON JUDGMENT: (per the Hon'ble Smt. Justice T. Meena Kumari)

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1. Since the issues involved in both the Writ Appeals are one and the same, they are clubbed together and are being disposed of by a common judgment.

2. WA No.1210 of 2003 has been filed assailing the order dated 18.9.2002 in WP No.1380 of 2000 whereas questioning the judgment in WP No.5889 of 1993 dated 2.4.2002, WA No.1206 of 2003 has been filed.

3. The appellants in both the writ appeals are one and the same and the sole respondent in WA No.1206 of 2003 is also second respondent in WA No.1210 of 2003. The petitioner in WP No.1380 of 2000 is the first respondent in WA No.1210 of 2003.

4. The facts , in brief, in WP No.5889 of 1993 are as follows:

5. The petitioner – Anjuman in WP No.5889 of 1993 sought declaration of the provisions of GO Ms.No. 524 Education (Rules) Department dated 20.12.1988 and the subsequent rejection orders passed by the District Educational Officer, **Kurnool** in respect of the appointments made in proceedings dated 9.3.1990, 1.6.1990, 9.4.1990 and 15.5.1992 as illegal and also to hold that Umar Arabic High School , Kurnool is a minority institution within the meaning of Art.30 of the Constitution of India as the said institution is being run by the petitioner-Anjuman and the said GO has no application to the minority institutions.

6. The case of the petitioner therein is that the Umar Arabic High School, Kurnool is an oriental school imparting education in Arabic and Persian up to the standard equivalent to secondary education. It is also submitted that the Government issued GO Ms.No.524 dated 20.12.1988 in violation of the rights conferred on the minority institution. It is further

averred in the writ petition that the said School is a society registered in the year 1923 under the Societies Registration Act, 1860 and the said Society is running several institutions and that the members of the Managing Committee are the members professing Islam religion. Further, the contention of the petitioner is that the properties of the Anjuman are registered with the AP Wakf Board and the accounts are regularly audited and that there is no prohibition for appointment of non-Muslims either in teaching or non-teaching or in any other capacity. The institution is not collecting any fee for the admissions to the oriental courses are concerned and in view of the above activities, the character of the institution comes within the meaning of a minority institution.

7. It is further stated that the Management has submitted necessary application for grant of recognition as a minority institution on 3.7.1989 pursuant to GO Ms.No.526 dated 21.12.1988. But, the second respondent in WP No.5889 of 1993 did not take any action. It is also stated that the Government of Andhra Pradesh issued GO Ms.No.90 dated 10.3.1989 conferring the status of minority institution to the Islamia Arabic College and the said institution is the sister institution and it is under the same management of the petitioner and it is located in the same campus. It is further stated that the management of the petitioner -Anjuman passed a resolution to fill up the posts of School Assistant in Mathematics and also the post of Attender. In those posts, one Sri Syed Sanaullah and Sri M.Aijaz Khan were appointed. It is also stated that one Ms. Farida Banu was appointed as a Teacher in an unaided post on 10.3.1991. When the proposals were sent to the fourth respondent i.e., the District Educational Officer, Kurnool for approval, the same were rejected stating that the conditions in GO Ms.No.524 dated 20.12.1988 have not been complied with. The case of the petitioner is that the said GO has no application to the minority institution and conditions imposed therein are in violation of Art.30 of the Constitution of India. Questioning the same, the petitioner Anjuman

filed WP No.5889 of 1993.

8. Upon hearing both sides, a learned single judge of this Court allowed the writ petition and directed the fourth respondent to approve the appointments with regard to aided posts and release the aid within six weeks from the date of receipt of a copy of the order provided they are qualified as per the rules and with regard to unaided post. The learned single Judge directed the District Educational Officer to approve the appointment. Questioning the said judgment in WP No.5889 of 1993, the respondents in the writ petition filed WA No.1206 of 2003 mainly on the ground that the learned single judge erred in holding that the petitioner institution is a minority institution though no minority certificate has been issued in favour of the writ petitioner institution under GO Ms.No.526 dated 21.12.1988.

9. One Farida Bano who was appointed as a Teacher in an unaided post of the Umar Arabic High School, which is under the management of the petitioner –Anjuman in WP No.5889 of 1993, has filed WP No.1380 of 2000 wherein she questioned the action of the respondents in the said writ petition i.e., appellants in WA No.1210 of 2003 in not appointing her as SG Teacher in the Aided post though the petitioner was working for the last 9 years and even though there are aided vacancies in the second respondent institution herein. The case of the petitioner is that though the second respondent in WA No.1210 of 2003 – Anjuman sought approval of appointment of SG Teachers by sending proposal , the fourth respondent in the present appeal i.e., the District Educational officer, Kurnool rejected the same on the sole ground that the management did not follow Rule 15 of GO Ms.No.524 Education Department dated 20.12.1998. A learned single judge of this Court disposed of the said writ petition in terms of the judgment in WP No.5889 of 1993 since the issue involved in the writ petition is squarely covered by the judgment of this Court. Questioning the said judgment, respondents 1 to 4 in the Writ Petition No.1380 of 2000 filed WA No.1210 of 2003.

10. Heard both sides.

11. The learned Government Pleader appearing for the appellants submits that the petitioner in WP No.1380 of 2000-Farida Bano was appointed by the Management without following due process as laid down in Rule 15 of GO Ms.No.524 Education (Rules) Department dated 20.12.1988 and hence the said appointment was made contrary to the Rules laid down in the said GO. Further, it is contended that the institution in which the petitioner is working is not accorded with minority status in terms of GO Ms.No.526 dated 21.12.1988 as on the date of appointment of Farida Bano and hence her appointment is made contrary to the Rules.

12. The learned Government Pleader further submits that the institution in which the Farida Bano was working did not obtain minority status certificate even though an application was made and that the post in which she is working is an unaided post, the learned single Judge erroneously granted a direction to release the aid and such a direction is beyond the scope of the relief sought for in the writ petition. Further, the learned Government Pleader has submitted that the Government issued a minority status certificate to the petitioner in WP No.5889 of 1993 only on 29.7.1997 and the second appellant herein has regularised the services of the petitioner in WP No.1380 of 2000.

13. In view of the fact that the Government have issued the minority status certificate to the second respondent in WA No.1210 of 2003 wherein the first respondent is working as a Teacher, the observations made by the learned single Judge in WP No.5889 of 1993 with regard to the interference of the appellants into the administration of the minority institution will come into force only w.e.f. 29.7.1997, on which date the institution in question is given minority status, but not prior to that date.

14. Under the above circumstances, the observations made by the learned single Judge that institution in question is a minority institution has to be set aside inasmuch as no certificate recognizing the institution as a

minority one was issued by the concerned authorities as per GO Ms. No.526 dated 21.12.1988 even as on the date of passing of the judgment in WP No.5889 of 1993.

15. Hence, we have no hesitation to set aside the findings of the learned single Judge. However, in view of the submissions made by the learned counsel appearing on behalf of the respondents herein that the services of Ms. Farida Bano have been regularised by the Commissioner of School Education, we deem it appropriate to grant liberty to the respondents herein to prefer statutory appeal before the appropriate appellate authority if they so desire within a period of four weeks from the date of receipt of a copy of this order. As and when such appeal is filed, the appellate authority is directed to dispose of the same within a period of 8 (eight) weeks thereafter. Till such time, the party respondent i.e., Farida Bano shall be continued in the institution.

16. With the above observations, these Writ Appeals are allowed. No costs.

(JUSTICE T.MEENA KUMARI)

(JUSTICE S.ANANDA REDDY)

Mhn/31/1/2005

To

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